

### **REMARKS**

This responds to the Office Action mailed on November 27, 2007.

No amendments, cancellations, or additions are made to the claims. As a result, claims 34-36, 41, and 45-48 are now pending in this application.

For the convenience of the Examiner, Applicant's remarks concerning the claims will be presented in the same order in which the Examiner presented them in the Office Action.

#### **Rejection of Claims 34-36, 47, and 48 under 35 U.S.C. §102(e) As Anticipated by Knox**

Claims 34-36, 47, and 48 were rejected under 35 U.S.C. §102(e) as being anticipated by Knox (U.S. 6,757,913). Applicant does not admit that Knox is prior art and reserves the right to swear behind Knox as provided for under 37 C.F.R. §1.131.

The rule under 35 U.S.C. §102 is well settled that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP §2131.

Knox does not appear to disclose all of the structural elements recited in independent claim 34.

Knox does not appear to disclose, for example:

a frequency modulation (FM) radio frequency (RF) transmitter, coupled to the audio source, to transmit an FM carrier signal modulated with the audio signal, the FM carrier signal having a specific carrier frequency within the range of 87.7 to 107.9 megahertz that does not interfere with transmission frequencies in a commercial FM broadcast band of 87.7 to 107.9 megahertz in a geographical region in which the sound generation device is currently located. [emphasis added]

The passage in Knox (col. 3, line 65 through col. 4, line 1; col. 4, lines 7-62; col. 5, lines 5-15 and lines 36-52) referred to by the Examiner<sup>1</sup> does not appear to describe an FM carrier signal having a specific carrier frequency within the range of 87.7 to 107.9 megahertz. In Knox,

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<sup>1</sup> Final Office Action, November 27, 2007, Paragraph 3.

the carrier signal is at “a frequency of at least 900 mHz” (col. 4, lines 23-26). Clearly, 900 mHz is not within the range of 87.7 to 107.9 megahertz specified in Applicant’s claim 34.

Nor does Knox disclose:

a channel locator controller to identify an available non-interfering carrier frequency, wherein the channel locator controller includes an RF receiver, coupled to the RF transmitter, to receive FM signals having different carrier frequencies; and a channel locator circuit, coupled to the RF receiver, to identify two or more bands of FM carrier frequencies below a minimum signal strength; wherein the channel locator controller is configured to identify an available non-interfering carrier frequency from an evaluation of the two or more bands of FM carrier frequencies. [emphasis added]

The passage in Knox (col. 4, lines 50-62; col. 9, lines 8-21; and col. 9, lines 5-52) referred to by the Examiner does not appear to disclose an evaluation of the two or more bands of FM carrier frequencies. In Knox, “each of the carrier signals of the group is preselected” (col. 4, lines 23-24). Although Knox describes “selection of a group of carrier frequencies which are different from those which may be used by another like system operation within the operating range of the system to ensure that there will be no interference by that other system” (col. 4, lines 58-63), Knox does not disclose an evaluation of the two or more bands of FM carrier frequencies, as in Applicant’s claim 34.

For the above reasons, independent claim 34 should be found to be allowable over Knox, and Applicant respectfully requests that the rejection of claim 34 under 35 U.S.C. §102(e) as anticipated by Knox be withdrawn.

Claims 35-36 and 47-48, which depend from claim 34 and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

**Rejection of Claims 41, 45, and 46 under 35 U.S.C. §103(a)  
as Unpatentable over Knox in view of Konisi**

Claims 41, 45, and 46 were rejected under 35 U.S.C. §103(a) as being unpatentable over Knox in view of Konisi et al. (U.S. 6,181,921).

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, the prior art reference (or references when combined) must teach or suggest every limitation of the claim. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA, 1974). MPEP §2143.

Neither Knox nor Konisi disclose all of the limitations recited in independent claim 41.

For example, neither Knox nor Konisi disclose:

a channel locator controller to identify an available non-interfering carrier frequency for the FM carrier signal having a specific carrier frequency within the range of 87.7 to 107.9 megahertz that does not interfere with transmission frequencies in a commercial FM broadcast band of 87.7 to 107.9 megahertz in a geographical region in which the portable electronic device is currently located; wherein the channel locator controller includes a stored program digital computer, the computer to store a database of two or more available non-interfering carrier frequencies arranged by geoposition; wherein the geoposition source is coupled to the stored program digital computer to provide a geoposition to the stored program digital computer; and wherein the channel locator controller is configured to identify a selected non-interfering carrier frequency from two or more available non-interfering frequencies stored in the database based on an evaluation of the two or more available non-interfering frequencies. [emphasis added]

Knox was discussed above.

Konisi appears to disclose a vehicle system to enable a vehicle-installed TV to switch channels as it moves through different reception areas. The system is computer-based and stores both "used" and "unused" channels for many different geographical areas. Based on the vehicle location, an on-board FM transmitter rebroadcasts the received TV audio to the vehicle's radio FM receiver (for superior audio quality), using an "unused" channel (so as not to interfere with any "used" channel in that particular area). As best understood, Konisi fails to disclose any evaluation of "unused" channels.

For the above reasons, independent claim 41 should be found to be allowable over any combination of Knox and Konisi, and Applicant respectfully requests that the rejection of claim 41 under 35 U.S.C. §103(a) as unpatentable over Knox in view of Konisi be withdrawn.

If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. MPEP §2143.03.

Claims 45 and 46, which depend from independent claim 41, and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

**Additional Elements and Limitations**

Applicant considers additional elements and limitations of the claims to further distinguish over the cited references, and Applicant reserves the right to present arguments to this effect at a later date.

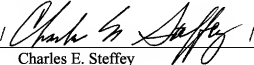
**Conclusion**

Applicant respectfully submits that claims 34-36, 41, and 45-48 are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney, Walter W. Nielsen (located in Phoenix, Arizona) at (602) 298-8920 or Applicant's below-signed attorney (located in Minneapolis, Minnesota) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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